

UNITED STATES COURT OF APPEALS January 15, 2008

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker  
Clerk of Court

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In re:

VINCENT CURRIE,  
  
Movant.

No. 07-3331  
(D.C. No. 07-CV-3271-SAC)  
(D. Kan.)

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ORDER

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Before **TACHA, EBEL, and O'BRIEN**, Circuit Judges.

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Vincent Currie was convicted in Kansas state court of aggravated kidnaping, aggravated battery, aggravated assault, and criminal possession of a firearm. He was sentenced to 268 months' imprisonment. He pursued proceedings in state court, then filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. The district court denied the petition, and this court denied a certificate of appealability and dismissed Mr. Currie's appeal. *Currie v. McKune*, No. 03-3244 (10th Cir. Feb. 19, 2004) (unpublished). Subsequently Mr. Currie filed a second § 2254 petition in the district court, which transferred it to this court so Mr. Currie could seek authorization to file it under 28 U.S.C. § 2244(b)(3). Mr. Currie then filed in this court a motion seeking authorization to file a second or successive § 2254 petition.

A petitioner seeking to bring a second or successive § 2254 petition may proceed only with a claim not presented in a prior application that (A) “relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” or (B) relies on facts that “could not have been discovered previously through the exercise of due diligence” and that “would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.” 28 U.S.C. §§ 2244(b)(1), (b)(2)(A), (b)(2)(B). Mr. Currie seeks to raise claims of abuse of judicial discretion, prosecutorial misconduct, ineffective assistance of trial counsel, and ineffective assistance of appellate counsel. As he admits, none of these claims rely on newly discovered evidence or a new rule of constitutional law. *See* Mot. at 9, 10, 10A. Consequently, they do not satisfy § 2244(b).

Mr. Currie’s motion for authorization to file a second or successive § 2254 petition is DENIED. This denial of authorization is not appealable and

“shall not be the subject of a for rehearing or for a writ of certiorari.” 28 U.S.C.

§ 2244(b)(3)(E).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a long horizontal flourish.

ELISABETH A. SHUMAKER, Clerk